

MONTANA STATE HISTORIC PRESERVATION OFFICE

GUIDELINES FOR PREPARATION OF SECTION 106 DOCUMENTATION

FOR NEW CELLULAR TOWER AND ANTENNA STRUCTURES

The Montana State Historic Preservation Office (Montana SHPO) developed the following guidance document to assist Federal Communications Commission (FCC) permit applicants and their consultants with the procedures outlined in the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (FCC PA for new towers and antenna). Please refer to the *Montana State Historic Preservation Office: Guidelines for Preparation of Section 106 Documentation for the Collocation of Wireless Antenna*, for more information and guidance on proposed collocation undertakings.

Additional general guidance can be found in *Consulting with the Montana SHPO: Guidelines and Procedures for Cultural Resource Review and Consultation under the National Historic Preservation Act and the Montana State Antiquities Act* (Montana SHPO Planning Bulletin No. 21) (see Additional Resources).

RESPONSIBILITY

The FCC PA for new towers and antenna records the terms and conditions agreed upon to fulfill the FCC's responsibilities under Section 106 of the National Historic Preservation Act (NHPA) as codified by 36 C.F.R. § 800. Under 36 C.F.R. § 800, the Federal agency responsible for the funding, permitting, licensing or approval of a project, activity or program is obligated to fulfill the requirements of Section 106 of the NHPA prior to the execution of the project, activity or program. In the case of cellular tower construction and antenna permitting, the FCC is ultimately accountable for ensuring that the applicant fulfills his/her responsibilities under Section 106. In other words, the FCC may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations, but remains legally responsible for all required eligibility findings and effect determinations.

On a side note, the Montana SHPO encourages the coordination of the Section 106 process with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). It is important to mention, however, that the NEPA requirements are not intended to replace the Section 106 process.

Please immediately notify the Montana SHPO, if it is discovered that the proposed cellular communication tower was partially or wholly constructed prior to the fulfillment of Section 106 requirements.

AREA OF POTENTIAL EFFECT

Montana SHPO's review of all cellular tower and antenna projects includes an evaluation of the project's Area of Potential Effect (APE). Under 36 C.F.R. § 800, the APE is defined as:

The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. The area of potential effect is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

In addition to effects that result from direct physical alteration or destruction, the APE must also account for indirect effects caused by the introduction of visual, audible or atmospheric elements.

The FCC PA requires the following minimum APEs for new towers:

- (a) Within one-half ($1/2$) of a mile from the tower site if the proposed tower is 200 feet or less in height;
- (b) Within three-fourths ($3/4$) of a mile from the tower site if the proposed tower is more than 200 feet, but no more than 400 feet in overall height; or
- (c) Within one-and-one-half ($1\frac{1}{2}$) miles from the proposed tower site if the proposed tower is more than 400 feet in overall height.

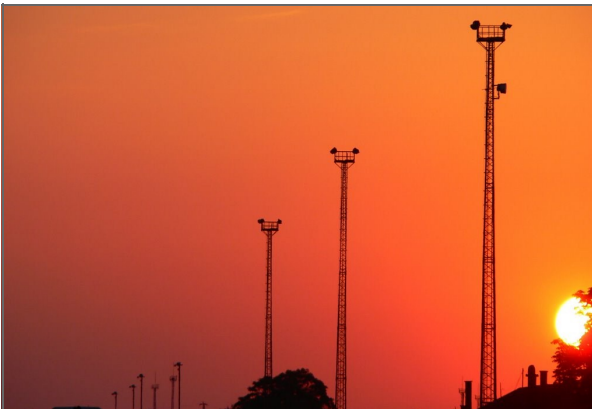
However, the Montana SHPO requests that for all proposed towers the applicant or consultant request at least a one (1) mile radius Class I File Search to determine the existence of significant historic properties adjacent to the required minimum APE.

STEP 1: INITIATE FILE SEARCH

After determining and defining the appropriate direct and indirect APE, the applicant or consultant should next request a Class I File Search from the Montana SHPO for information regarding previously identified and recorded cultural resources (historic and archaeological sites) located within the APE. **It is extremely important for all file search requests to indicate the Township, Range, and Section for the entire APE.**

The Class I File Search request should be submitted using the *Montana File Search Request Form*, which is available online at <http://mhs.mt.gov/shpo/forms.asp>. Information returned will include: site/property number, location (Township, Range, and Section), site type, period, ownership, and eligibility status.

There is a minimal fee associated with processing a Class I File Search. Search results are generally provided in one to three (1-3) calendar days. For more information on file search requests, please contact Damon Murdo, the Montana SHPO Cultural Records Manager at dmurdo@mt.gov or (406) 444-7767.



STEP 2: LOCAL/TRIBAL CONSULTATION

The Montana SHPO places an emphasis on local and tribal consultation. Therefore, in addition to documentation of Tribal Involvement (through the Tower Construction Notification System (TCNS)), the applicant or consultant should include all relevant information necessary to convey fulfillment of local consultation requirements.

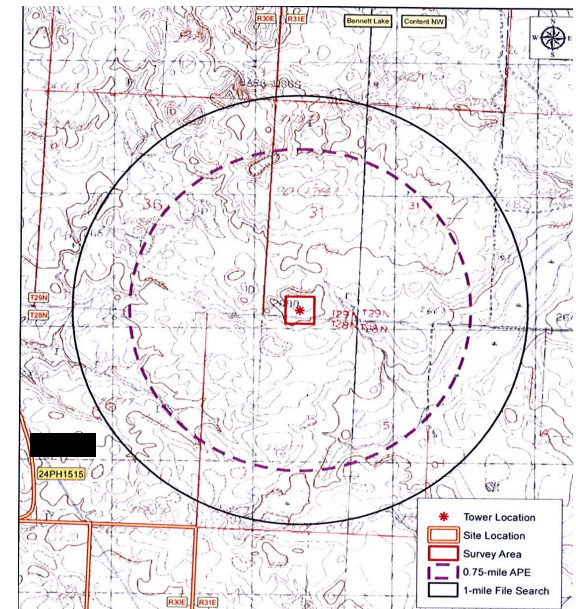
It is important for the applicant or consultant to make a concerted effort to seek out local individuals or organizations with a demonstrated interest in the history of the local area. If the area has a Certified Local Government (CLG) representative (i.e. Local Historic Preservation Officer), then he/she would be the preferred contact. A list of current Montana CLGs is available online at <http://mhs.mt.gov/shpo/communitypres.asp>. If the area has no CLG, then the applicant or consultant should determine the closest local Historical Society or Museum using internet-based research or other means (see the Museum Association of Montana website at <http://montanamuseums.org/>). In addition to an individual or organization with an interest in local history, the Montana SHPO recommends the applicant or consultant contact a local government official or planning department.

Once the applicant or consultant identifies the appropriate local contacts, he/she should solicit comment on the proposed cell tower in writing. If comment is not provided to the applicant or consultant, all contact information should be provided to the Montana SHPO. If the local representative has concerns about the tower, then these concerns should be addressed and resolved prior to the submittal of the packet to the Montana SHPO.

STEP 3: CONSULTATION WITH MONTANA SHPO

The applicant or consultant should provide all documentation of local consultation efforts (including copies of letters) to Montana SHPO in the submission packet. If efforts to communicate with local interested parties are unsuccessful after a reasonable amount of time, the provided contact information fulfills the local consultation requirements.

If the local consulting parties express valid concerns that cannot be resolved, then the applicant or consultant should contact the FCC. If the FCC agrees that the applicant has made a reasonable and good faith effort, the FCC should clearly state its position in a letter addressed to the Montana SHPO. This letter should be submitted with the completed packet.



Map of project area with survey area, three-quarter mile visual area of potential effect and one mile files search area.

STEP 4: SUBMITTING THE FINISHED PACKET FOR REVIEW

After completing and documenting the Class I File Search and Local and Tribal consultation, the applicant or consultant should next submit the required packet to the Montana SHPO for review. Both a hard-copy and digital copy (CD) of the submittal packet should be mailed to the Montana SHPO. If necessary, the digital copy can also be submitted electronically through the State of Montana File Transfer Service (instructions are available at <https://transfer.mt.gov/>).

The submission packet must include the completed FCC Form 620, as well as a stand-alone Cultural Resource Inventory Report completed by the consultant (for further guidance on survey and report standards, refer to the Montana SHPO Planning Bulletin No. 21 (see Additional Resources)). The Cultural Resource Inventory Report should be accompanied by a Cultural Resource Annotated Bibliography System (C.R.A.B.S.) Form (available at <http://mhs.mt.gov/shpo/forms.asp>).

Upon receipt of the completed packet, the Montana SHPO will review the contents to ensure the applicant or consultant has made a reasonable and good faith effort to determine any potential adverse effects to historic properties located within the APE. **After reviewing the provided documentation, the Montana SHPO will respond with a formal response letter within thirty (30) calendar days.**

Hint: Please include all documentation of local and tribal consultation in the submission packet. The more information readily available to the Montana SHPO, the more efficient and effective the Section 106 review process.

???QUESTIONS???

We are happy to answer any questions regarding the Section 106 review and consultation process. Questions may be addressed to Kathryn Ore, the Montana SHPO Review and Compliance Officer, at (406) 444-0388 or kore@mt.gov. Thank you for your careful consideration of Montana's significant historic resources.

ADDITIONAL RESOURCES

The *Consulting with the Montana SHPO: Guidelines and Procedures For Cultural Resource Review and Consultation under the National Historic Preservation Act and the Montana State Antiquities Act* (Montana State Historic Preservation Office Planning Bulletin No. 21) is available online at <http://mhs.mt.gov/shpo/archaeology/consultingwith.asp>;

The *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (September 2004) is available online at <http://wireless.fcc.gov/siting/npa/FCC-04-222A3.pdf>;

The *Federal Communications Commission Information and Instructions: FCC Wireless Telecommunications Bureau New Tower Submission Packet* is available with additional instruction online at www.fcc.gov/Forms/Form620/620.pdf;

The National Historic Preservation Act of 1966, As Amended in 2006 is available online at <http://www.achp.gov/docs/nhpa%202008-final.pdf>;

The Section 106 Federal Regulations (36 C.F.R. § 800 - Protection of Historic Properties) are available online at <http://www.achp.gov/regs-rev04.pdf>.

